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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,910	12/04/2003	Andrew W. Holman		4693
7590 Matthew F. Jodziewicz, Esq. 3447 Mandeville Canyon Road Los Angeles, CA 90049			EXAMINER SMITH, PAUL B	
			ART UNIT 3763	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS.		01/17/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/726,910	HOLMAN, ANDREW W.
	Examiner Paul B. Smith	Art Unit 3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10/02/2006.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 16-25 is/are allowed.  
 6) Claim(s) 1-15 and 26-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02 October 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____. _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 10/02/2006 have been fully considered but they are not persuasive.
2. With respect to claims 1-2 and 15, the device disclosed by Prince anticipates applicant's claimed structure. The ability to maintain a watertight seal upon rotation of the device from a vertical to a near horizontal position is considered functional. Since the device comprises all of applicant's claimed structures, the device is considered to be functionally capable of maintaining a watertight seal.
3. The safety features taught by Prince to prevent the user from tilting beyond a prescribed angle a shut off flap illustrated by reference 4 in figures 3 and 4. Prince further teaches that upon tilting the device of figures 1 and 2 beyond a prescribed angle, liquid will spill onto the user. This is interpreted to mean liquid will be poured from the cup onto the face of the user through the open end. The integrity of the watertight seal is interpreted to be maintained beyond the prescribed angle.
4. With respect to claims 3-7, applicant points out that Barnett *et al.* makes no mention that the seal is watertight. The seal is taught to be airtight and as such considered watertight since air particles are smaller than water particles.

5. Further, applicant asserts that the modification of the device of Prince with the seal structure of Barnett *et al.* contradicts the safety features stated by Prince. This is not so, as mentioned above the Prince's device spills liquid through the open end not through the watertight seal. Therefore, modification of the seal would not effect liquid from spilling out of the open end.
6. With respect to claim 8, applicant argues that the prior art, Prince, is not a valid basis for a rejection based on previous arguments. As argued above, Prince comprises the structural elements and is considered functional making it a valid basis.
7. With respect to claims 9-12, applicant argues that the teaching of Schindlegger stirs a container for mixing the contents. However, applicant is claiming only a vibrating means and in operation the device of Schindlegger inherently vibrates.
8. With respect to claims 13-14, applicant argues that the prior art, Prince, is not a valid basis for a rejection based on previous arguments. As argued above, Prince comprises the structural elements and is considered functional making it a valid basis.
9. With respect to claims 26-29, applicant has amended claim 26 to include the phrase, "while the user's head is held at least generally upright or rearwards". This phrase is not a positive method step. The phrase clarifies the structure of the cup in

which liquid is being placed. As argued above, the device of Prince is capable of maintaining a watertight seal beyond the prescribed safety angle. Therefore, all method steps are believed to be taught by Prince.

10. Applicant's arguments see page 10, filed 10/02/2006, with respect to claims 16-25 have been fully considered and are persuasive. The rejection of claims 16-25 has been withdrawn.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-2, 5, 15 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Prince ('621).

13. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1) Prince further discloses a method of irrigating the nasal and sinus cavities comprising the steps of placing the cup with liquid against the user's face maintaining a watertight seal, tilting the user's head to insert the

nose into the liquid, rotating the cup to allow liquid to flow into the user's nostrils, and draining the liquid from the nasal cavity. (See Paragraph 19-20)

14. Thus, Prince appears to reasonably teach every element of claims 1-2, 5, 15 and 26-29.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Barnett *et al.* ('488).

18. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

19. Prince fails to disclose a cup wherein the width of said sidewalls vary or where the sealing rim extends curving outwardly and downwardly away from the cup.

20. Barnett *et al.* teaches a watertight seal adapted for positioning around the nose. (See Figure 1 and 6)

21. It would have been obvious to one of ordinary skill in the art to combine the disclosure of Prince with the teachings of Barnett *et al.* to provide a structure suitable for forming a watertight seal between an apparatus and a user's face.

22. Claim 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Armendariz ('569).

23. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

24. Prince fails to disclose a first and second protuberance on the interior sides of said cup.
25. Armendariz teaches a mask comprising a first and second protuberance adapted to engage the nostril preventing airflow through the nose. (See Figure 2 and 4)
26. It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the disclosure of Prince with the teachings of Armendariz to provide a cup with interior protuberances adapted to engage the nostrils of a patient.
27. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Schindlegger ('504).
28. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)
29. Prince fails to disclose a vibrating means for vibrating fluid held in the cup.
30. Schindlegger teaches an electric apparatus adapted to stirring liquid within a bottle. The apparatus attaches to the bottom of the bottle and can be releasably attached. (See Figure 1)

31. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Prince with the teachings of Schindlegger to provide an electric vibrating means attachable to a cup for vibrating the liquid held within.

32. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prince ('621) in view of Katayev ('896).

33. Prince discloses a cup for irrigating the nasal cavity comprising a bottom wall, a front wall, a first and second sidewalls. The front wall has a notch that is adapted to seal against the user's face. (See Figure 1)

34. Prince fails to disclose a heating means for heating the liquid within the cup.

35. Katayev teaches using electric heating wires to warm liquid within a bottle. (See Figure 1)

36. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the disclosure of Prince with the teachings of Katayev to provide an electric means of heating the liquid held in the cup disclosed by Prince.

***Allowable Subject Matter***

37. Claims 16-25 are allowed.

***Conclusion***

38. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

39. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul B. Smith whose telephone number is 571-272-6022. The examiner can normally be reached on 8 am - 4 pm.

41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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